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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

Michael Poole,	)	
	)	
Plaintiff,	)	Civ. No. 2001-57
	)	
v.	)	
	)	
L.S. Holding, Inc., Little Switzerland, Inc., collectively d/b/a Little Switzerland,	)	
	)	
Defendant.	)	

ATTORNEYS:

Karin Bentz, Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

Bennett Chan, Esq.
St. Thomas, U.S.V.I.
For the defendant.

MEMORANDUM

Moore, J.

Defendant Little Switzerland, Inc. ("defendant" or "Little Switzerland") moves to compel arbitration and dismiss plaintiff Michael Poole's ("plaintiff" or "Poole") complaint. Plaintiff opposes the motions. For the reasons set forth below, I will dismiss defendant's motion to compel arbitration for lack of jurisdiction and grant its motion to dismiss the complaint.

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about August 25, 1998, Little Switzerland and Poole executed an Employment Agreement ("Agreement"), whereby Poole would become Vice President and General Merchandise Manager for Little Switzerland for two years. The parties agreed to the following arbitration clause:

> Any controversy or claim arising out of or relating to this Agreement or the breach thereof or otherwise arising out of the Executive's employment or the termination of that employment (including, without limitation, any claims of unlawful employment discrimination whether based on age or otherwise) shall, to the fullest extent permitted by law, be settled by arbitration in any forum or form agreed upon by the parties or, in the absence of such an agreement, under the auspices of the American Arbitration Association ("AAA") in Boston, Massachusetts in accordance with the Employment Dispute Resolution Rules of the AAA . . . .

Employment Agreement ¶ 11.

On July 15, 1999, Poole, who is diabectic, "experienced a severe and unexpected low blood sugar reaction" to his insulin injection, causing him to have a car accident. (Pl.'s Compl. ¶ 14.) According to Poole, the day after the accident Ken Watson, former President and CEO of Little Switzerland, called Poole's wife "and grilled her about what transpires during a low blood sugar reaction and his health. At the end of the conversation, Mr. Watson stated that [Poole] presented a huge liability to Little Switzerland as a diabectic." (*Id.* ¶ 15.) Soon

thereafter, Poole's supervisory authority was allegedly limited by Little Switzerland. (*Id.* ¶ 16.)

On January 11, 2000, Robert Baumgardner, CEO and president of Little Switzerland, advised Poole by letter that the company had suspended his employment pending a decision of the Board of Directors. (*Id.* ¶ 17.) Three days later, the "Board of Directors voted unanimously to terminate [Poole]'s employment pursuant to Section 5(b)(iv) of the Agreement based upon [his] 'gross negligence or willful misconduct.'" (Def.'s Mem. of Law in Supp. of its Mot. to Compel Arbitration and to Dismiss, Apr. 4, 2001, at 2.)

In June 2000, Poole filed a Demand for Arbitration with the AAA pursuant to the Agreement. In his Demand, Poole asserted employment discrimination based on disability and age. (Pl.'s Resp. to Def.'s Mot. to Compel Arbitration and to Dismiss, May 9, 2001, at 3.) In October 2000, the parties agreed to arbitrate before Arbitrator Robert Shea[1] in Boston, Massachusetts with a hearing scheduled for April 4 and 5. Subsequently, on December

[1] Poole contests the fact that the parties agreed to have Shea arbitrate this matter. (Pl.'s Resp. to Def.'s Mot. to Compel Arbitration and to Dismiss, May 9, 2001, at 2.) Rather, Poole notes that the parties failed to agree to a particular arbitrator, resulting in the use of the "list appointment method." This method entails providing a list of potential arbitrators to the parties, who then strike and rank the listed individuals. Thus, despite Poole's claims to the contrary, the parties did agree to arbitrate this matter before Arbitrator Shea through the use of the list appointment method.

14, 2000, Poole sought to withdraw from arbitration, however, Little Switzerland objected, necessitating the continuation of arbitration. Following Poole's later request for a continuance, Arbitrator Shea scheduled hearing dates for May 22 and 23, 2001.

In the meantime, Poole filed the present action with this Court on March 26, 2001. Among his various claims,[2] Poole alleges that his termination violated the Virgin Islands Wrongful Discharge Act ("WDA"), 24 V.I.C. § 76. On April 16, 2001, Little Switzerland moved to dismiss the complaint and to compel arbitration pursuant to the Agreement. Poole opposed the motion and argued that the WDA does not permit one party to compel another to arbitration. (Pl.'s Resp. to Def.'s Mot. to Compel Arbitration and to Dismiss, May 9, 2001, at 3-5.) This Court has jurisdiction pursuant to 28 U.S.C. § 1332 due to the diversity of the parties.

II. DISCUSSION

A. Motion to Compel Arbitration

Little Switzerland moves to compel arbitration pursuant to the Agreement, which mandated arbitration for any and all

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[2] Poole alleges eight counts in his complaint. He claims that Little Switzerland: (1) discriminated against him on account of his disability; (2) discriminated against him due to his age; (3) breached the Agreement; (4) violated the WDA; (5) intentionally inflicted extreme emotional distress; (6) negligently inflicted extreme emotional distress; (7) breached its duty of good faith; and (8) violated public policy.

disputes arising from Poole's employment. This Court, however, is without jurisdiction to compel arbitration. *See Econo-Car International, Inc. v. Antilles Car Rentals, Inc.*, 499 F.2d 1391 (3d Cir. 1974). The Third Circuit Court of Appeals reversed an order from the District Court of the Virgin Islands, St. Croix Division, compelling arbitration in New York. The Court of Appeals noted that section 4 of the Federal Arbitration Act ("FAA") stated that such motions "shall be within the district in which the petition for an order directing such arbitration is filed." 9 U.S.C. § 4. As arbitration is to take place in Massachusetts, this Court is without jurisdiction to compel arbitration. Therefore, I will dismiss the defendant's motion to compel.

B. Motion to Dismiss the Complaint

Little Switzerland also moves to dismiss Poole's complaint on the grounds that all the issues in question relate to Poole's employment and thus are arbitrable. Poole advances four arguments against dismissing the complaint. He asserts that: (1) employment discrimination claims are inappropriate for arbitration proceedings; (2) arbitration proceedings will not protect his interests adequately; (3) the Agreement is a product of unequal bargaining power; and (4) Massachusetts is an inconvenient forum. Each of these arguments is without merit.

Poole's argument that employment discrimination claims are inappropriate for arbitration proceedings completely ignores precedent. The Supreme Court of the United States has repeatedly upheld agreements to arbitrate employment disputes.[3] Most recently, the Supreme Court in *Circuit City* held that section 1 of the FAA, which excludes "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" from coverage, only applies to transportation workers. *See Circuit City Stores, Inc. v. Adams*, 121 S. Ct. 1302, 1308-11 (2001). Accordingly, the Court concluded that section 2 of the FAA, which compels judicial enforcement of arbitration agreements of "a contract evidencing a transaction involving commerce," applies to all other types of employment contracts. *See id.* at 1307 (citing *Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 273-77 (1995) (interpreting section 2 of the FAA expansively). Therefore, as Poole's employment contract is not exempted from coverage under section 1 of the FAA, the parties may arbitrate their claims under their

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[3] *See Circuit City Stores, Inc. v. Adams*, 121 S. Ct. 1302 (2001); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991) (concluding that age discrimination claim was subject to a compulsory arbitration clause); *Mitsubishi Motors v. Soler Chrysler-Plymouth Corp.*, 473 U.S. 614 (1985); *Seus v. John Nuveen & Co.*, 146 F.3d 175 (3d Cir. 1998) (holding that employee's discrimination claims did not preclude enforceability of arbitration agreement); *Charles v. Virgin Islands Service Co.*, Civ. No. 1996-85 M, 1999 WL 176035 at * 2 (D.V.I. Feb. 16, 1999) (holding that religious and racial employment discrimination claims are arbitrable).

valid arbitration agreement. "Contracts to arbitrate are not to be avoided by allowing one party to ignore the contract and resort to the courts. Such a course could lead to prolonged litigation, one of the very risks the parties, by contracting for arbitration, sought to eliminate." *Southland Corp. v. Keating*, 465 U.S. 1, 7 (1983).

Poole also raises the notion that the WDA precludes arbitration on any employment disputes arising in the Virgin Islands. Poole, however, points to no authority, other than a non-binding Equal Employment Opportunity Commission policy statement, to support his contention. (Pl.'s Resp. to Def.'s Mot. to Compel Arbitration and to Dismiss, May 9, 2001, at 5.) There is nothing in the WDA that precludes the use of arbitration. The WDA merely details what constitutes lawful and unlawful discharge. It does not favor judicial remedy over an arbitral one. Furthermore, as Little Switzerland notes, even if the WDA precluded arbitration, it would likely be preempted by the FAA on account of a strong federal policy favoring the enforcement of arbitration agreements. *See Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 477 (1989) (holding that preemption of state law occurs when it "stands as an obstacle to the full accomplishment and execution of the full purposes and objectives of Congress").

Thus, having agreed to arbitrate, and with no recognizable legislative waiver, a party is bound by its agreement. *See Mitsubishi Motors*, 473 U.S. at 628.

Poole also argues that arbitration proceedings will not adequately protect his interests. In essence, Poole believes that a Massachusetts-based arbitrator either would be apt to misapply the WDA or fail to apply it all together. Such an argument again fails to acknowledge precedent. The *Mitsubishi Motors* and *Gilmer* Courts specifically addressed many of Poole's concerns and found each to be wanting. *See Gilmer*, 500 U.S. at 26-33 (rejecting arguments of potential biasness on the part of the arbitrator, limited discovery, lack of broad relief and the inability of arbitration to further public policy as grounds for voiding an arbitration agreement); *Mitsubishi Motors*, 473 U.S. at 633-34 (rejecting the contention that complex issues at best left to the courts). In particular, regarding Poole's assertion that his rights under the WDA will be limited in arbitration, the Mitsubishi Motors Court stated that "[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than judicial, forum." *Mitsubishi Motors*, 473 U.S. at 628. The arbitrator will thus adjudicate Poole’s WDA

claims, after first determining whether Virgin Islands law applies.[4]

Poole also urges this Court not to enforce the arbitration clause on account of the unequal bargaining power of the parties. Similar to his other arguments, Poole again ignores precedent. The *Gilmer* Court specifically rejected such an argument. "Mere inequality in bargaining power . . . is not a sufficient reason to hold that arbitration agreements are never enforceable in the employment context." *Gilmer*, 500 U.S. at 33. Likewise, the Third Circuit Court of Appeals in *Seus* concluded that "a contract of adhesion is invalid only where its terms unreasonably favor the other party." *Seus*, 146 F.3d at 184. A review of the Agreement's arbitration provision reveals that neither party is benefitted unfairly. This provision merely states that the parties will arbitrate "any controversy or claim arising out of or relating to" Poole's employment. Moreover, there is no evidence that Poole, "an experienced businessman, was coerced or defrauded into agreeing to the arbitration clause." *Gilmer*, 500 U.S. 33. Therefore, as previous courts have held similar

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[4] The choice-of-law provision of the Agreement designates Massachusetts law as the applicable law to all disputes. *See* Agreement ¶ 17.

arbitration clauses to be enforceable,[5] there is no reason to invalidate this one.

Finally, Poole contends that Massachusetts is an inconvenient forum due to the prohibitive costs of arbitrating there. Since Poole agreed to the mechanism by which Boston has become the site of the arbitration, he has no basis for now complaining that it is inconvenient.

Therefore, as Poole raises no valid grounds upon which to nullify the arbitration clause of the Agreement and all issues to this matter are arbitrable, the Court will dismiss Poole's complaint. *See Seus*, 146 F.3d at 179.

III. CONCLUSION

I will dismiss the Defendant's motion to compel arbitration for lack of jurisdiction and will grant its motion to dismiss the plaintiff's complaint.

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[5] *See Circuit City*, 121 S. Ct. at 1306 (enforcing clause agreeing to arbitrate "any and all previously unasserted claims, disputes or controversies arising out of or relating to [employment]"); *Gilmer*, 500 U.S. at 23 (upholding arbitration clause, which "agree[d] to arbitrate any dispute, claim or controversy" arising from employment); *Southland Corp. v. Keating*, 465 U.S. 1, 4 (1984) (enforcing clause that "[a]ny controversy or claim arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration"); *Seus*, 146 F.3d at 177 (validating clause "arbitrate any dispute, claim or controversy that may arise" from employment); *Charles*, 1999 WL 176035, at * 2 (enforcing clause agreeing to arbitrate wrongful discharge and employment discrimination under either Virgin Islands or federal law).

ORDERED this 20th day of August, 2001.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

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v.	)	
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Defendant.	)	

ATTORNEYS:

Karin Bentz, Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

Bennett Chan, Esq.
St. Thomas, U.S.V.I.
For the defendant

ORDER

For the reasons set forth in the foregoing Memorandum of even date, it is hereby

ORDERED that defendant's motion to compel arbitration is **DISMISSED**; it is further

ORDERED that defendant's motion to dismiss plaintiff's complaint is **GRANTED**; and it is further

ORDERED that the parties shall bear their own costs and attorney fees.

ENTERED this 20th day of August, 2001.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____/s/_____
Deputy Clerk

cc: Hon. G.W. Barnard
Mrs. Jackson
Karin Bentz, Esq.
Bennett Chan, Esq.
Michael Hughes, Esq.